EXTENSIONS OF REMARKS

INTRODUCTION OF CITIZENS PROTECTION ACT

HON. JOSEPH M. McDADE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 5, 1998

Mr. MCDADE. Mr. Speaker, I introduced bipartisan legislation this morning, along with my colleague, JACK MURTHA, that will safeguard the citizens of this nation from unfair, abusive and unethical conduct by employees of the Department of Justice. The bill, which we have named the Citizens Protection Act, will also insure that the Department is not able to exempt its own attorneys from the same State laws and rules of ethics as all other attorneys in this country.

The rights and freedoms of our citizens will come under increasing danger if we continue to allow the Justice Department to police itself in secret and exempt itself from regular rules of attorney conduct. We must strengthen oversight of the Department and shine a bright light on prosecutorial misconduct.

The bill establishes clear standards of conduct for Department of Justice employees and makes them accountable for any misconduct. Our legislation makes it a punishable offense for any DOJ employee to engage in such actions as leaking information during an investigation, seeking the indictment of any person without probable cause and failing to release information that would exonerate a person under indictment. It also defines such actions as intentionally misleading a court as to the guilt of any person and knowingly misstating or altering evidence as punishable offenses.

An independent review board is created to monitor compliance with those standards. The board would have the authority to impose penalties such as probation, demotion, suspension and dismissal of those found guilty of charges of misconduct. All meetings of the board will be open to the public.

For the information of my colleagues, I am submitting for publication in the CONGRESSIONAL RECORD a partial list of specific instances of prosecutorial misconduct in federal cases which was prepared by the Congressional Research Service at my request.

The second part of the bill insures that the Department of Justice, through attempts at self-regulation, cannot exempt its lawyers from the same rules of ethics that govern the professional conduct of all other attorneys. These rules are currently enforced, and must continue to be enforced, by the state supreme courts. The legislation affirms a U.S. Court of Appeals ruling on January 6 which concludes that the Attorney General lacks statutory authority to promulgate a rule allowing government attorneys to engage in ex parte communications with persons represented by an attorney.

Concerns about the DOJ's attempts at self-regulation have been expressed by the American Bar Association, the Conference of Chief Justices and the National Association of Criminal Defense Lawyers.

I urge my colleagues to cosponsor this legislation, which responsibly checks the potential for misconduct and self-regulation without impeding the mission of the Department of Justice.

SPECIFIC INSTANCES OF PROSECUTORIAL MISCONDUCT PREPARED BY THE CONGRESSIONAL RESEARCH SERVICE

APPENDIX I

COMPOSITE LIST

PRE-TRIAL

INVESTIGATIONS/CASE PREPARATION

Allowing informants to exercise effective unguided prosecutorial discretion: *United States* v. *Taylor*, 956 F.Supp. 622, 658–60 (D.S.C. 1997)(1).

Bombarding individual with undercover solicitations to commit a crime whose prosecution is characterized to targeted individual as constitutionally suspect: *Jacobson* v. *United States*, 503 U.S. 540 (1992)(2).

INTENTIONAL WITNESS INTIMIDATION

Badgering witnesses, themselves under indictment, while promising the indictments against them will be dismissed if they testify for the government: *United States* v. *LaFunente*, 54 F.3d 457, 461–62 (8th Cir. 1995)(1).

Threatening a witness with loss of immunity from prosecution if he testifies for the defense: *United States* v. *Schlei*, 122 F.3d 944 991–93 (11th Cir. 1997)(1).

Threatening to prosecute: *United States* v. *Smith*, 478 F.2d 976, 979 (D.C. Cir. 1973)(2).

Interviewing witness before the beginning of the case for the defense during which the prospect of incrimination was discussed: *United States* v. *Morrison*, 535 F.2d 223, 228 (3d Cir. 1976)(2).

''Prosecutor's eleventh hour telephone call to witness's attorney reminding him of potential fifth amendment problem if witness took the stand'': *United States* v. *MacCloskey*, 682 F.2d 468, 479 (4th Cir. 1982)(2).

Conditioning a potential defense witness's plea bargain on his continued agreement not to testify at the trial of the accused: *United States* v. *Henricksen*, 564 F.2 197, 198 (5th Cir. 1977)(2).

DECISION TO CHARGE

United States v. *Wayte*, 479 U.S. 598 608 (1985) (''the decision to prosecute may not be based upon an unjustifiable standard such as race, religion, or other arbitrary classification, including the exercise of protected statutory and constitutional rights'')(3).

Selective Prosecution

On the basis of race: *United States* v. *Armstrong*, 116 S. Ct. 1480 (1996)(3).

On the basis of religion: *United States* v. *Cyprian*, 23 F. 3d 1189, 1195–196 (7th Cir. 1994)(3).

On the basis of gender: *United States* v. *Redobndo-Lemos*, 955 F. 2d 1296, 1298–1300 (9th Cir. 1992)(3).

Solely on the basis of national origin: *United States* v. *Al Jibori*, 90 F. 3d 22, (2d Cir. 1996)(3).

Based on the exercise of First Amendment rights: *United States* v. *Bayless*, 923 F. 2d 70, 72 (7th Cir. 1991); *United States* v. *Steele*, 461 F. 2d 1148 (9th Cir. 1972)(2).

Vindictive Prosecution

Prosecution based on prior invocation of constitutional rights (ordinarily rights of criminally accused): *United States* v. *Godwin*, 457 U.S. 368, 372–80 (1982)(3).

Prosecuting, when considering the evidence as a whole, there is no probable cause: *United States* v. *Ramming*, 915 F. Supp. 854, 867–69 (S.D. Tex. 1996)(1).

Securing incriminating statements from the accused with assurances that he or she would not be prosecuted: *United States* v. *Dudden*, 65 F. 3d 1461, 1468–469 (9th Cir. 1995)(1).

Prosecuting in breach of a plea agreement: *United States* v. *Holloway*, 74 F. 3d 249, 251 (11th Cir. 1996)(1); *United States* v. *Digregorio*, 795 F. 2d 630, 638 (S.D.N.Y. 1992), citing *United States* v. *Fields*, 592 F. 2d 638 647–48 (2d Cir. 1979), inter alia (3).

Abuse of the Grand Jury Process

Currying the favor of a grand jury panel: *United States* v. *Breslin*, 916 F. Supp. 438, 442, 443 (E.D.Pa. 1996)(1).

Encouraging the grand jury to act with unnecessary haste: *United States* v. *Breslin*, 916 F. Supp. at 443, 445 (E.D.Pa. 1996)(1).

Misleading the grand jury to the belief that they were required to accept hearsay evidence: *United States* v. *Breslin*, 916 F. Supp. at 444–45 (E.D.Pa. 1996)(1).

Providing the grand jury with inaccurate statement of the requirements for indictment: *United States* v. *Breslin*, 916 F. Supp. at 445–46 (E.D. Pa. 1996)(1).

Using grand jury subpoenas directed against the attorney of the target of the investigation to disrupt attorney-client relationship and otherwise harass the attorney and his client. *In re Grand Jury Matters*, 593 F. Supp. 103 (D.N.H. 1984), *aff'd*, 751 F.2d 13 (1st Cir. 1984)(2).

Inflammatory remarks before the grand jury suggesting that a target of the investigation may have ''bugged'' the grand jury room to discover witness testimony against him: *United States* v. *Griffith*, 756 F.2d 1244, 1246–249 (6th Cir. 1985)(2).

Suggesting, without foundation, organized crime links to the target of a grand jury tax investigation and commenting on the veracity of witnesses before the grand jury, conduct characterized as ''improper, reprehensible, and unacceptable:'' *United States* v. *Serubo*, 604 F.2d 807, 814–16 (3d Cir. 1979)(2).

Intentional presentation of incompetent and misleading evidence to the grand jury for ''no other purpose than [improper] calculated prejudice:'' *United States* v. *Samango*, 607 F.2d 877 (9th Cir. 1979)(2).

Intentional presentation of false, disparaging, unsworn and irrelevant evidence: *United States* v. *Hogan*, 712 F.2d 757, 760–61 (2d Cir. 1983)(2).

Using a ''forthwith'' grand jury subpoena duces tecum in lieu of a search warrant when grand jury was not in session: *United States* v. *Hilton*, 534 F.2d 556, 565 (3d Cir. 1976)(2).

Offering extensive, frequent comments amounting to unsworn testimony and misstatements of the law, coupled with use of ''forthwith'' subpoenas, plays upon jurors' patriotism, and heavy-handed questioning of witnesses: *United States* v. *Sears, Roebuck and Co., Inc.*, 518 F.Supp. 179 (C.D.Cal. 1981), *rev'd*, 719 F.2d 1386 (9th Cir. 1983) (prosecutor's ''abusive'' and ''overzealous'' misconduct was not sufficiently prejudicial to want dismissal of the resulting indictment)(2).

Advising grand jury that an important government witness would not be testifying before them because if he did organized

crime, with whom the targets of the investigation were associated, might harm him: *United States* v. *Riccobene,* 451 F.2d 586, 587 (3d Cir. 1971)(2).

Leaking information on matters occurring before the grand jury to the press: *In re Grand Jury Investigation (Lance),* 610 F.2d 202 (5th Cir. 1980) (reversing a lower court denial for a hearing on whether sanctions where appropriate for such disclosures); *Barry* v. *United States,* 865 F.2d 1317 (D.C.Cir. 1989)(same)(2).

Knowingly permitting indictment based at least in part on material, perjured evidence: *United States* v. *Basurto,* 497 F.2d 781, 784–87 (9th Cir. 1974)(2).

Misleading grand jury by unauthorized and ''swearing in'' designation IRS agents as ''agents of the grand jury'' *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1328–330 (D.Colo. 1984), *rev'd,* 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987) (on grounds district court dismissal of indictments was inappropriate remedy)(2).

Misleading grand jury through the exclusive use of hearsay summaries to secure the indictment of one of accused: *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1339–341 (D. Colo. 1984), *rev'd,* 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987) (on ground district court dismissal of indictments was inappropriate remedy)(2).

Permitting unauthorized disclosure of grand jury materials to IRS employees with no criminal law enforcement-related responsibilities: *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1331–332 (D. Colo. 1984), Rev'd, 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987) (on grounds district court dismissal of indictments was inappropriate remedy)(2).

Allowing improper use of grand jury materials for purposes of IRS audits unrelated to any criminal investigation: *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1332–334 (D.Colo. 1984), *rev'd,* 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987) (on grounds district court dismissal of indictments was inappropriate remedy(2).

Widespread disclosure of matters occurring before the grand jury in ''target letters'': *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1334–335 (D.Colo. 1984), *rev'd,* 921 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987) (on grounds district court dismissal of indictments was inappropriate remedy)(2).

Improperly informing witnesses that grand jury secrecy provisions applied to them: *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1335–336 (D.Colo. 1984), *rev'd,* 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987) (on grounds district court dismissal of indictments was inappropriate remedy) (2).

Provide witnesses with pocket immunity in the form of assurance letters without authorization: *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1336–338 (D. Colo. 1984), *rev'd,* 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987) (on grounds district court dismissal of indictments was inappropriate remedy)(2).

Intentionally calling witnesses before the grand jury with the knowledge that they would calim their privilege against self-incrimination in order to prejudice the grand jury against the target of the investigation and their activities: *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1338–339 (D. Colo. 1984), *rev'd,* 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987) (on grounds district court dismissal of indictments was inappropriate remedy)(2).

Using threats and verbal abuse against an expert grand jury witness for disagreeing with the legal theories espoused by the IRS: *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1343 (D. Colo. 1984), *rev'd,* 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987) (on grounds district court dismissal of indictments was inappropriate remedy)(2).

Calling a witness before the grand jury solely for the purpose of prosecuting the witness for perjury on the basis of his testimony: *United States* v. *Chen,* 933 F.2d 793, 796 (9th Cir, 1991)(3).

Abuse of process: use of court subpoenas for office interviews: *United States* v. *Lilla-Chaparro,* 115 F.3d 797, 804 (10th Cir. 1997)(1).

Delays

Pre-Indictment Delays

Intentional pre-indictment delay, prejudicial to the defendant, and perpetrated by the government for reasons of tactical advantage: *United States* v. *Lovasco,* 431 U.S. 783, 795 n.17 (1977)(3).

Post-Indictment Delays

Intentional post-indictment delay, prejudicial to the defendant, and perpetrated by the government for reasons of tactical advantage: *United States* v. *Marion,* 404 U.S. 307, 324 (1972)(3).

Failure to Provide Defense With Material, Exculpatory Evidence or Evidence Tending to Impeach Critical Government Witness [Brady v. *Maryland,* 83 (1963)(3)]:

Failure to disclose extraordinary privileges afforded government inmate witnesses: *United States* v. *Doyle,* 121 F.3d 1078, 1082 n.2 (7th Cir. 1997) (giving El Rukn inmate witnesses access to internal prosecution memoranda, drugs, sex and unlimited free telephone calls; and valuable gifts, including cash, clothing, 'walkman' radios, food, cigarettes and beer'')(1).

Failure to disclose the presentation of misleading evidence: *United States* v. *Vozzella,* 124 F.3d 389, 391, 392 (2d Cir. 1997)(1).

Failure to disclose the presentation of false evidence: *United States* v. *Alzate,* 47 F.3d 1103, 1107–11 (11th Cir. 1995); *United States* v. *Duke,* 50 F.3d 571, 576 (8th Cir. 1995)(1).

Failure to disclose the criminal record of a government witness: *United States* v. *Duke,* 50 F.3d 571, 576 (8th Cir. 1995)(1).

Failure to disclose existence and extent of the criminal involvement of individual, the accused identified in her duress defense, *United States* v. *Udechukwu,* 11 F.3d 1101, 1104–106 (1st Cir. 1993)(1).

Failure to confirm (and denial) defense counsel suggestion that witness, whom the defense was unable to locate and who was central to the defense of the accused, had entered a plea bargain agreement with the government requiring his testimony, *United States* v. *Kojayan,* 8 F.3d 1315, 1316–325 (9th Cir. 1993)(1).

Failure to disclose evidence that the witness, who testified that the accused had paid him to hold drugs, had lied in earlier proceedings involving the same alleged conspiracy *United States* v. *Cuffie,* 80 F.3d 514, 518–19 (D.C.Cir. 1996(1).

Failure to disclose that the principal government witness was under criminal investigation for unrelated misconduct: *United States* v. *Kelly,* 35 F.3d 929, 937 (4th Cir. 1994)(1).

Failure to disclose threats against one government witness made by a second government witness: *United States* v. *O'Conner,* 64 F.3d 355, 359–60 (8th Cir. 1995)(1).

Interference With the Attorney-Client Relationship

Allowing an attorney to act as an agent of the government and solicit incriminating evidence from his or her client: *United States* v. *Sabri,* 973 F.Supp. 134, 147 (W.D.N.Y. 1996); *United States* v. *Marshank,* 777 F.Supp. 1507 (N.D.Cal. 1991)(1).

Surrepitious, improper acquisition of attorney work product: *United States* v. *Horn,* 811 F.Supp. 739, 749 (D.N.H. 1992(1).

Manifestly and avowedly corrupt intrusions: *United States* v. *Schwimmer,* 924 F.2d 443, 477 (2d Cir. 1991) (noting a similar view expressed in *United States* v. *Gartner*), 518 F.2d 633, 637 (2d Cir. 1975)(3).

Improper acquisition of defense strategy with resulting injury to the accused or benefit to the government: *United States* v. *Cross,* 928 F.2d 1030, 1053 (11th Cir. 1991)(3).

Post-indictment Contact in the Absence of Counsel

Undercover, post-indictment solicitation of incriminating statements in the absence of retained counsel: *Massiah* v. *United States,* 377 U.S. 201 (1964)(2).

Conducting plea negotiations directly with an indicted defendant without notifying retained counsel and in violation of applicable ethical restrictions: *United States* v. *Lopez,* 765 F.Supp. 1433, 1456–463 (N.D.Cal 1991)(1).

Post-indictment interview of the employees of the accused out of the presence and without notice to counsel: *United States* v. *Kilpatrick,* 594 F.Supp. 1324, 1342 (D.Colo. 1984), *rev'd* 821 F.2d 1456 (10th Cir. 1987), *aff'd sub nom., Bank of Nova Scotia* v. *United States,* 487 U.S. 250 (1987)(on grounds district court dismissal of indictments was inappropriate remedy)(2).

Trial

Conflict of Interest

Prosecuting a case in which the prosecutor has a personal, pecuniary interest in the outcome: *United States* v. *Heldt,* 668 F.2d 1238, 1275 (D.C.Cir. 1981)(3).

Prosecuting a case in which the prosecutor's interests in his personal and professional reputation are threatened by a *bona fide* civil action alleging bad faith in the performance of official duties: *United States* v. *Heldt,* 668 F.2d 1238, 1275 (D.C. Cir. 1981)(3).

Prosecuting a case using information secured from the accused when the prosecutor was acting as the attorney for the accused: *Wilkins* v. *Bowersox,* 933 F.Supp. 1496, 1521–522 (W.D.Mo. 1996)(3).

Representing the United States in both regulatory and criminal proceedings: *United States ex rel. S.E.C.* v. *Carter,* 907 F.2d 484, 488 (5th Cir. 1990)(''SEC attorneys' previous involvement in underlying civil case created a potential for conflict and an appearance of impropriety. This overt and substantial interest in the case and the misstatements in the SEC attorneys' brief undermine our confidence in these prosecutions . . . appointment of the SEC attorneys as special prosecutors was plain error'')(3).

Prosecuting a case in which the prosecutor is an essential witness: *United States* v. *Torres,* 503 F.2d 1072, 1083 (2d Cir. 1974)(2).

Allowing an attorney representing the government in a related civil matter to prosecute: *United States ex rel. S.E.C.* v. *Carter,* 907 F.2d 484, 488 (5th Cir. 1990)(2).

Improper Argument

Suggesting Guilt by Association

Emphasizing the similarities between the accused and a codefendant/witness who had pled guilty: *United States* v. *Dworken,* 855 F.2d 12, 29–32 (1st Cir. 1988)(2).

Arguing for the conviction of the accused on the basis of an earlier conviction of an alleged co-conspirator: *United States* v. *Mitchell,* 1 F.3d 235. 238–42 (4th Cir. 1993)(1).

Suggesting Guilt Based on the Adverse Inference From Claim of Right or Privilege

Commenting on the silence of the accused after notification of Miranda rights: *United States* v. *Thomas,* 943 F.Supp. 693 699–701 (E.D.

Tex. 1996)(1); *Doyle* v. *Ohio,* 426 U.S. 610, 618–19 (1976)(3).

Commenting, directly or indirectly, on the accused's failure to testify: *Griffin* v. *California,* 380 U.S. 609, 611–15 (1965)(3).

Commenting, directly or indirectly, on the accused's failure to testify: *United States* v. *Roberts,* 119 F.3d 1006, 1015 (1st Cir. 1997); *United States* v. *Wihbey,* 75 F.3d 761, 771 (1st Cir. 1996); *United States* v. *Kallin,* 50 F.3d 689, 693 (9th Cir. 1995); *United States* v. *Cotnam,* 88 F.3d 487, 497–500 (7th Cir. 1996); *United States* v. *Hardy,* 37 F.3d 753, 756–59 (1st Cir. 1994)(1).

Commenting, direct or indirect, upon the failure of the accused to testify: *United States* v. *LeQuire,* 943 F.2d 1554, 1565–568 (11th Cir. 1991); *United States* v. *Eltayib,* 88 F.3d 157, 172 (2d Cir. 1996)(2).

Commenting on the demeanor of the accused: *United States* v. *Leal,* 75 F.3d 219, 225 (6th Cir. 1996)(1).

Commenting, uninvited, upon the failure of the accused to present evidence, either generally or specifically: *United States* v. *Anchondo-Sandoval,* 910 F.2d 1234, 1237–238 (5th Cir. 1990)(2).

Commenting on the accused's invocation of his privilege against self-incrimination before the grand jury: *United States* v. *Bustamante,* 45 F.3d 933, 946 (5th Cir. 1995)(1).

Calling a witness the prosecutor knows will validly invoke a privilege with adverse inferences for the accused: *United States* v. *Brown,* 12 F.3d 52, 54 (5th Cir. 1994)(1).

Referring to invocation of the Fourth Amendment rights by the accused: *United States* v. *Thomas,* 93 F.3d 479, 487 (8th Cir. 1996)(1).

Inflammatory Remarks

Sympathy for witnesses: *United States* v. *Morgan,* 113 F.3d 85, 90 (7th Cir. 1997)(1).

Religious beliefs: *United States* v. *Levy-Cordero,* 67 F.3d 1002, 1008 (1st Cir. 1995); *United States* v. *Cartagena-Carrasquillo,* 70 F.3d 706, 712–14 (1st Cir. 1995); *United States* v. *Manning,* 23 F.3d 570, 573 (1st Cir. 1994); *Arrieta-Agressot* v. *United States,* 3 F.3d 525, 527 (1st Cir. 1993); *United States* v. *Giry,* 818 F.2d 120, 133 (1st Cir. 1987)(1).

Racial and/or provincial bias against the accused: *United States* v. *Cannon,* 88 F.3d 1495, 1052 (8th Cir. 1996)(1).

Inviting a guilty verdict based on the out of state residence of the accused: *United States* v. *Williams,* 989 F.2d 1061, 1071–72 (9th Cir. 1993)(2).

Calling upon the jury ''to get even for all the wrongs imposed on the good people of our society'' by convicting the accused: *United States* v. *Doe,* 860 F.2d 488, 492–94 (1st Cir. 1988)(2).

Graphic comment suggesting a lack of patriotism on the part of the accused: *United States* v. *Rodriquez,* 765 F.2d 1546, 1560 (11th Cir. 1985).

Persistent references to the poverty, to Christmas-time, to disadvantaged women and children, and to economic depression as appropriate backdrops to the crime with which the defendant was accused: *United States* v. *Payne,* 2 F.3d 706, 711–16 (6th Cir. 1993)(1).

Suggesting that funding for school districts was imperilled by the gambling related RICO activities of the accused: *United States* v. *Vaccaro,* 115 F.3d 1211, 1218 (5th Cir. 1997)(1).

Bad Character Remarks

Emphasizing the bad character (violent and vicious criminal) of the accused: *United States* v. *Procopio,* 88 F.3d 21, 30–31 (1st Cir. 1996)(1).

Repeated references to the past criminal record of the accused during closing argument: *United States* v. *Jackson,* 41 F.3d 1231, 1233 (8th Cir. 1994)(1).

Misrepresentation, in the presence of the jury, that the defendant accused of harboring illegal aliens had himself entered the country illegally: *United States* v. *Santana-Camacho,* 833 F.2d 371 (1st Cir. 1987)(2).

Presentation of emotional evidence of the violent acts of an accused charged with fraud, attempting to impeach a defense witness with prejudicial questions for which there was no evidentiary basis, and arguing guilt on the basis of counts dismissed by the court and contrary to the evidence; *United States* v. *McBride,* 862 F.2d 1316 (8th Cir. 1988)(2).

Attacking Defense Counsel or the Role of Defense Counsel

Ridiculing defense counsel and offering personal opinions on credibility of defense witnesses: *United States* v. *Collins,* 78 F.3d 1021, 1039–40 (6th Cir. 1996); *United States* v. *Barr,* 892 F.Supp. 51, 57 (D.Conn. 1995); *United States* v. *Bautista,* 23 F.3d 725, 733–34 (2d Cir. 1994)(1).

Stating or implying to the jury that defense counsel has suborned perjury: *United States* v. *Verna,* 113 F.3d 499, 504 (4th Cir. 1997)(1).

Suggesting or implying that the purpose of defense counsel is to prevent the jury from discerning the truth: *United States* v. *Frederick,* 78 F.3d 1370, 1379–380 (9th Cir. 1996); *United States* v. *Vaccaro,* 115 F.3d 1211, 1218 (5th Cir. 1997) (prosecutor's statement to the jury that it was the job of defense attorneys to muddle the issues was clearly improper)(1).

Repeatedly accusing defense counsel, in the presence of the jury, of intentionally misleading the jurors and witnesses and of lying in court: *United States* v. *McLain,* 823 F.2d 1457, 1462 (11th Cir. 1987)(2).

Attacking the role of defense counsel and the integrity of defense counsel: *United States* v. *Friedman,* 909 F.2d 705, 707–10 (2d Cir. 1990)(2).

Improper Characterization of Defense Witnesses or Evidence

Attacking witness credibility with evidence not on the record: *United States* v. *Zehrbach,* 47 F.3d 1252, 1264 (3d Cir. 1995); *United States* v. *Mueller,* 74 F.3d 1152, 1157 (11th Cir. 1996); *United States* v. *Crutchfield,* 26 F.3d 1098, 1100–103 (11th Cir. 1994)(1).

Arguing that the accused and witnesses for the defense have lied: *United States* v. *Moore,* 11 F.3d 475, 480–81 (4th Cir. 1993)(1).

Characterizing the testimony of the accused and defense witnesses as lies: *United States* v. *Smith,* 982 F.2d 681, 684 (1st Cir. 1993); *United States* v. *Anchondo-Sandoval,* 910 F.2d 1234, 1237–238 (5th Cir. 1990)(2).

Puffing Up The Government's Case

Urging conviction on the basis of the prestige of the court, the government, or the prosecutors: *United States* v. *Catillo,* 77 F.3d 1480, 1498 (5th Cir. 1996); *United States* v. *Melendez,* 57 F.3d 238, 240–241 (2d Cir. 1995); *United States* v. *Richardson,* XXX F.3d XXX, (7th Cir. 1997); *United States* v. *Carroll,* 26 F.3d 1380, 1389–390 (6th Cir. 1994)(1).

Bolstering witness credibility with evidence not on the record: *United States* v. *Henry,* 47 F.3d 17, 21 (2d Cir. 1995); *United States* v. *Johnson-Dix,* 54 F.3d 1295, 1304 (7th Cir. 1995)(1).

Vouching for government witness's credibility: *United States* v. *Cotnam,* 88 F.3d 487, 500 (7th Cir. 1996); *United States* v. *Manning,* 25 F.3d 570, 572–74 (1st Cir. 1994); *United States* v. *Carroll,* 26 F.3d 1380, 1389–390 (6th Cir. 1994)(1).

Vouching for the credibility of government witnesses: *United States* v. *Williams,* 989 F.2d 1061, 1071–72 (9th Cir. 1993); *United States* v. *Kerr,* 981 F.2d 1050, 1054 (9th Cir. 1992); *United States* v. *Eyster,* 948 U.S. 1196, 1204–206 (11th Cir. 1991); *United States* v. *Simtob,* 901 F.2d 799, 805–6 (9th Cir. 1990); *United States* v. *Eltayib,* 88 F.3d 157, 172 (2d Cir. 1996)(2).

Telling the jury how uncalled witness would testify if called: *United States* v. *Molina-Guevara,* 96 F.3d 698, 703, 704–5 (3d Cir. 1996).

Arguing to the jury, after repeated admonishment by the court, that the government only prosecutes the guilty: *United States* v. *Stefan,* 784 F.2d 1093, 1099–1100 (11th Cir. 1986); *United States* v. *Smith,* 982 F.2d 681, 684 (1st Cir. 1993)(2).

Reliance on Facts Not Evidence

Knowing reference to inadmissible or unsupported evidence during the prosecution's opening statement: *United States* v. *Millan,* 812 F.Supp. 1086, 1088–89 (S.D.N.Y. 1993)(1).

Urging conviction by reference to inadmissible evidence: *United States* v. *Adams,* 74 F.3d 1093, 1096–98 (11th Cir. 1996)(1).

Securing conviction on allegations stated as facts but not in evidence: *United States* v. *Berry,* 92 F.3d 597, 598–99 (7th Cir. 1996); *United States* v. *Morseley,* 64 F.3d 907, 912 (4th Cir. 1995) (it was unquestionably improper for the prosecutor to tell the jury in his closing argument that the accused had confessed when he had not); *United States* v. *Anderson,* 61 F.3d 1290, 1299 (7th Cir. 1995) (it was improper for the prosecutor to inform the jury that the accused had ruined ''literally thousands and thousands of lives'' even though the government offered no evidence to support such a statement); *United States* v. *Blakey,* 14 F.3d 1557 (11th Cir. 1994) (unsupported argument to the jury that the accused was a ''professional criminal''); *United States* v. *Bautista,* 23 F.3d 725, 733–34 (2d Cir. 1994)(1).

Reliance on Perjury or Deception

Presentation of false evidence: *Napue* v. *Illinois,* 360 U.S. 264, 269 (1959).

Misleading the court and jury: *United States* v. *Forlorma,* 94 F.3d 91, 94–5 (2d Cir. 1996); *United States* v. *Vozzella,* 124 F.3d 389, 391, 392 (2d Cir. 1997); *United States* v. *Alzate,* 47 F.3d 1103, 1107–11 (11th Cir. 1995); *United States* v. *Udechukwu,* 11 F.3d 1101, 1104–106 (1st Cir. 1993); *United States* v. *Kojayan,* 8 F.3d 1315, 1316–325 (9th Cir. 1993)(1).

Offering perjurious testimony: *United States* v. *Brown,* 121 F.3d 700 (1997)(1).

Using or failing to correct clearly perjurious testimony: *United States* v. *Rivera Pedin,* 861 F.2d 1522, 1529–530 (11th Cir. 1988)(2).

Intentionally misrepresenting the state of the law to the jury: *United States* v. *Thomas,* 943 F.Supp. 693, 699–701 (E.D. Tex. 1996)(1).

Intentionally failing to correct erroneous testimony: *United States* v. *Young,* 17 F.3d 1201, 1202–203 (9th Cir. 1994)(1).

Encouraging misrepresentations in order to bolster the perjured testimony of a government witness: *United States* v. *Eyster,* 948 U.S. 1196, 1204–206 (11th Cir. 1991)(2).

Post-Trail

Contact in the Absence of Counsel

Questioning a defendant, without notifying his counsel, concerning matters arising in a sentencing-related medical examination: *United States* v. *Adonis,* 744 F.Supp. 336, 345–47 (D.D.C. 1990)(2).

TRIBUTE TO MATTIE SIMS

HON. BILL PASCRELL, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 5, 1998

Mr. PASCRELL. Mr. Speaker, it is my pleasure to introduce you to Mattie Sims. Mattie is a wonderful person, and an outstanding asset to our community, my hometown of Paterson, New Jersey.

Mattie's roots are in the south. She was born in Alabama and raised in Florida. Eventually, she made her way north to New Jersey,